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Before the  
Federal Communications Commission  
Washington, D.C. 20554

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Federal Communications Commission  
Office of Secretary

In the matter of	)	
	)	
Petition of Time Warner Cable for Declaratory	)	WC Docket No. 06-55
Ruling that Competitive Local Exchange Carriers	)	
May Obtain Interconnection Under Section 251 of	)	
the Communications Act of 1934, as Amended, to	)	
Provide Wholesale Telecommunications to VoIP	)	
Providers	)	
	)	
Petition of Time Warner Cable for Preemption	)	WC Docket No. 06-54
Pursuant to Section 253 of the Communications	)	
Act, as Amended	)	

**REPLY COMMENTS OF MIDCONTINENT COMMUNICATIONS**

Midcontinent Communications ("Midcontinent"), by its attorney, hereby submits its reply comments in the above-referenced proceedings.<sup>1</sup> For the reasons described below, the Commission should grant the relief sought by Time Warner Cable.

**I. Introduction**

Midcontinent is one of the Upper Midwest's leading providers of cable television, local and long distance telephone service, high-speed Internet access and cable advertising services. Midcontinent serves more than 200 communities and nearly 250,000 customers in North and South Dakota, Northern Nebraska and Western Minnesota. Midcontinent also is a certificated competitive telecommunications provider in Minnesota, North Dakota and South Dakota, and currently provides telephone service to more than 70,000 residential and business customers in its service area.

<sup>1</sup> Petition of Time Warner Cable for Declaratory Ruling that Competitive Local Exchange Carriers May Obtain Interconnection Under Section 251 of the Communications Act of 1934, as Amended, to Provide Wholesale Telecommunications to VoIP Providers, WC Docket No. 06-55; Petition of Time Warner Cable for Preemption Pursuant to Section 253 of the Communications Act, as Amended, WC Docket No. 06-54.

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Midcontinent entered the telephone business as a facilities-based circuit-switched provider, and is beginning to use voice over IP technologies to reach markets that cannot be served efficiently with conventional technology.<sup>2</sup> This experience has shown the importance of ensuring that there are no technological barriers to competition, regardless of the technology used by a service provider. Indeed, most of Midcontinent's customers do not know what technology is used to provide their service, and do not care, so long as it is economical and reliable and offers the features they want to use.

Midcontinent's experience since it started providing telephone service in 1998 illustrates the importance of Commission action in these proceedings. Even though Midcontinent has relied on circuit-switched technologies, it has faced many hurdles in entering markets in the Dakotas, particularly in areas served by smaller incumbent local exchange carriers ("ILECs"). This experience suggests strongly that further hurdles will appear as Midcontinent offers voice over IP service in new communities. For this reason, Midcontinent strongly supports the comments of the National Cable and Telecommunications Association ("NCTA"). It is critical that the Commission ensure that interconnection is available through any of the three paths described in the NCTA comments, so that competition can flourish regardless of technology.

## **II. Midcontinent Has Experienced Significant Difficulties in Obtaining Interconnection.**

Even ten years after the enactment of the Telecommunications Act of 1996 (the "1996 Act"), entering the telephone business in a new market remains a complicated and time-consuming task. While the 1996 Act and the Commission's implementing regulations provide a

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<sup>2</sup> Midcontinent typically offers service over its own loops, switches and interconnection facilities. Midcontinent does use unbundled loops in some cases and, as described below, sometimes provides service via resale when it first enters a market.

framework for entry, they do not ensure a smooth road. Absent clarification concerning voice over IP service, ILECs will be able to throw additional roadblocks in the way of cable operators and other providers who wish to use newer technology.

Midcontinent's experience in the Dakotas is illustrative of the problems that competitive carriers face today. On many occasions, providing telephone service in a new community in the Dakotas means entering into a relationship with a new carrier, and the difficulties of doing so are myriad. For instance, Midcontinent is now engaged in a proceeding to lift the rural exemption for North Dakota Telephone Company ("NDTC"), which serves Devil's Lake, North Dakota. NDTC is in the process of constructing new fiber plant that it has announced will be used to offer video service in direct competition with Midcontinent, and so it is very important to Midcontinent to be able to provide competitive telephone service. Midcontinent made a bona fide request for interconnection nine months ago, and has yet to obtain a decision on its petition to lift the rural exemption. Once the rural exemption is lifted, moreover, Midcontinent will need to complete negotiations with NDTC and implement its service, a process that will take several months. Consequently, it almost certainly will be more than a year between Midcontinent's initial request to NDTC and the time it can provide service in Devil's Lake.

Because of the difficulties of eliminating a carrier's rural exemption, Midcontinent often makes every effort to obtain voluntary cooperation from rural carriers, but that process also is fraught with difficulties. For instance, Midcontinent is negotiating with another rural carrier in North Dakota for simple resale, but the negotiations have taken nearly a year to date and have not yet been completed.<sup>3</sup> In another case, Midcontinent sought to obtain number portability from

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<sup>3</sup> Midcontinent is not naming the carrier or location because the negotiations are ongoing. Midcontinent often begins service in rural markets using resale as a way of gauging consumer demand for competitive local telephone service. Midcontinent then shifts to full facilities-based service once it is established in the market.

a carrier in South Dakota, obtained an agreement that required portability, but then had to ask the South Dakota Public Utilities Commission to enforce that agreement. It now has been three years since Midcontinent made its initial request, and number portability still is not available in that market.

Again, these difficulties have occurred in the circuit-switched environment. If the use of voice over IP technology permits carriers and state commissions to create new hurdles that must be overcome before a competitor can enter the market, the delays and harm to consumer welfare that results only will become more significant.

### **III. The Commission Should Adopt NCTA's Position in These Proceedings.**

In light of the existing difficulties outlined above, NCTA's position in these proceedings represents the best solution to ensure that competition has a fair chance. NCTA's approach is simple and addresses the issues directly: The requirement that carriers provide direct interconnection should be applied to voice over IP services offered via any of the "three paths" identified in the NCTA comments.<sup>4</sup>

As NCTA explains, Section 251 gives the Commission and the states broad authority to require appropriate interconnection. There is no language in Section 251 that implies that a regulator may not specify the form of interconnection to be made available. Instead, Section 251 creates several different sets of obligations for incumbent carriers, through the language of Sections 251(c), (b) and (a) without limiting regulators' authority, and there is no reason to believe that the standard Section 251(c) and (b) obligations should not apply to interconnection to carriers that ultimately interconnect with voice over IP providers. Moreover, Section 251(a) is

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<sup>4</sup> NCTA Comments at 5. These paths are (1) obtaining state certification; (2) interconnecting through affiliated telecommunications carriers that do not provide end-user services; and (3) obtaining interconnection via wholesale arrangements with unaffiliated carriers. *Id.*

a grant of power to require carriers to “interconnect directly or indirectly,” that is, in any technically feasible way.<sup>5</sup> In other words, Section 251(a) provides a backstop to the more specific language of Sections 251(b) and (c). With this broad power, the Commission can require any form of interconnection that is necessary to ensure that competitive telephone services, regardless of technology, can interconnect efficiently.

While Section 251 is available to both the Commission and the states, Commission action is particularly important because it is apparent that the states have adopted widely varying stances on interconnection by voice over IP providers. Some states, appropriately, are facilitating use of IP technology by competitors. Others, however, have been more restrictive, insisting that voice over IP providers conform to particular conceptions of how voice service should be provided, or attempting to prevent voice over IP providers from entering the market. Given the wide range of state positions, it is imperative for this Commission to act to create uniformity by ensuring that interconnection is available to providers, regardless of whether they seek to offer service entirely over their own facilities or rely on other carriers to assist them.

Some commenters, including the South Dakota Telephone Association, claim that the Commission would be better served by waiting to act until it addresses a wider range of issues in the IP-enabled service proceeding.<sup>6</sup> The Commission should resist these stalling tactics. As shown above and in NCTA’s comments, the Communications Act provides a plain basis for the relief requested in the petitions, so there is no legal basis for inaction. Equally important, waiting until every other voice over IP issue is resolved will harm consumers and competition, without any countervailing benefit. As Midcontinent’s experience shows, there already are more

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<sup>5</sup> 47 U.S.C. § 251(a). NCTA Comments at 7.

<sup>6</sup> See, e.g., South Dakota Telephone Association, *et al.* Comments at 4-5.

than enough roadblocks to providing voice service competition; there is no reason to create additional burdens for voice over IP providers.

#### IV. Conclusion

For all these reasons, Midcontinent Communications respectfully requests that the Commission grant the petitions of Time Warner Cable forthwith.

Respectfully submitted,

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